NOTICE

The United States District Court for the Northern District of California has approved for public comment proposed revisions of certain Local Rules of Court. Copies of the proposed revisions may be obtained from the Court's Internet site: http://www.cand.uscourts.gov. If you would like a copy mailed to you, please send a written request and a stamped, self-addressed 9" x 12" envelope with $1.52 return postage to:

Proposed Local Rule Revisions
Office of the Clerk of Court
450 Golden Gate Avenue
P.O. Box 36060
San Francisco, California 94102

(Note: No requests will be accepted by telephone or in person.)

All comments and suggestions regarding the contents of the revised rules should be sent as soon as convenient and, in any event, postmarked no later than May 28, 2004 to:

Hon. Claudia Wilken
Chair of the Rules Committee
United States Courthouse
1301 Clay Street
Oakland, CA 94612-5212

PROPOSED LOCAL RULE REVISIONS
NORTHERN DISTRICT OF CALIFORNIA
(April 2004)

CIVIL LOCAL RULES

Proposed Amended Rule, Red-line version:

3-4. Papers Presented for Filing.

(a) First Page Requirements. The first page of each paper presented for filing must set forth:

(1) The name, address, telephone number, facsimile ("fax") telephone number, e-mail address and state bar number of counsel (or, if pro se, the name, address, telephone number, ~~and~~ fax telephone number and e-mail address of the party) presenting the paper for filing. This information must appear in the upper left hand corner and must indicate the party represented by name as well as that party's status in the litigation (i.e., plaintiff, defendant, etc.). In multiparty actions or proceedings, reference may be made to the signature page for the complete list of parties represented;

Cross Reference

See Civil L.R. 3-9 "Parties"; Civil L.R. 3-11 "Failure to Notify of Address Change"; and Civil L.R. 11-3(d) "Appearances and Service on Local Co-Counsel."

~~**Commentary**~~

~~Counsel or the party presenting the paper for filing also may include on the first page in the upper left-hand corner an e-mail address, if any.~~

Proposed Amended Rule:

3-10. *Ex Parte* Motion to Proceed *In Forma Pauperis*

(a) Motion to Proceed *In Forma Pauperis*. At the commencement of an action, any person wishing the Court to authorize prosecution of the action without payment of fees or security, pursuant to 28 United States Code § 1915, must submit, with the proposed complaint, an *Ex Parte* Motion to Proceed *In Forma Pauperis*, pursuant to Civil L.R. 7-10(a). The Clerk shall file the complaint, assign a case number and deliver a copy of the complaint and motion to the Chambers of the assigned Judge for determination.

(b) Content of Motion. The motion must contain:

(1) A request to proceed *in forma pauperis*;

(2) An affidavit or declaration under penalty of perjury providing the information required by Title 28 U.S.C. § 1915, on a form available at the Office of the Clerk and on the Court's Internet site, or an equivalent form; and

(3) A proposed order.

(c) Determination of the Motion. The Judge may grant the motion, grant the motion subject to partial payment of fees, costs or security, or deny the motion. If the motion is granted in part or denied, the order will state that the action is dismissed unless any outstanding fees, costs or security is paid within the time set in the order.

Commentary

If, during the pendency of an action, any person wishes to prosecute or defend an action *in forma pauperis,* the person must file an Administrative Motion to Proceed *In Forma Pauperis* pursuant to Civil L.R. 7-10(b).

Proposed Amended Rule:

3-12. Related Cases.

(a) Definition of Related Cases. An action is related to another when:

(1) The actions concern substantially the same parties, property, transaction or event; and

(2) It appears likely that there will be an unduly burdensome duplication of labor and expense or conflicting results if the cases are conducted before different Judges.

(b) Administrative Motion to Consider Whether Cases Should be Related. Whenever a party knows or learns that an action, filed in or removed to this district is (or the party believes that the action may be) related to an action which is or was pending in this District as defined in Civil L.R. 3-12(a), the party must promptly file in the earliest-filed case an Administrative Motion to Consider Whether Cases Should be Related, pursuant to Civil L.R. 7-11. In addition to complying with Civil L.R. 7-11, a copy of the motion, together with proof of service pursuant to Civil L.R. 5-6, must be served on all known parties to each apparently related action. A Chambers copy of the motion must be lodged with the assigned Judge in each apparently related case under Civil L.R. 5-1(b).

(c) ***Sua Sponte***. Judicial Referral for Purpose of Determining Relationship. Whenever a Judge believes that a case pending before that Judge is related to another case, the Judge may refer the case to the Judge assigned to the earliest-filed case with a request that the Judge assigned to the earliest-filed case consider whether the cases are related. The referring Judge shall send a copy of the referral to all parties to all affected cases. The parties must file any response in opposition to or support of relating the cases pursuant to Civil L.R. 3-12(d). Alternatively, a Judge may order the parties to file a motion pursuant to Civil L.R. 3-12(b).

(d) Content of Motion. An Administrative Motion to Consider Whether Cases Should be Related must contain:

(1) The title and case number of each apparently related case;

(2) A brief statement of the relationship of the actions according to the criteria set forth in Civil L.R. 3-12(a).

(e) Response to Motion. Any opposition to or support of a Motion to Consider Whether Cases Should be Related must be filed in the earliest filed case pursuant to Civil L.R. 7-11. The opposition or statement of support must specifically address the issues in Civil L.R. 3-12(a) and (d) and be served on all parties and lodged with the Chambers of all Judges identified in the

motion. If the motion identifies more than two potentially related cases, and a party contends that not all of the cases are related, the party must address whether any of the cases are related to one another.

(f) Order Granting or Denying Relationship. Upon a motion by a party or a referral by another Judge, after the time for filing support or opposition to the Motion to Consider Whether Cases Should Be Related has passed, the Judge in this District who is assigned to the earliest-filed case will decide if the cases are or are not related and will notify the Clerk, who, in turn, will notify the parties.

(1) Due to the need for parties and affected Judges to have a speedy determination of the motion or referral, the Judge assigned to the earliest-filed case shall act on the motion or referral within 10 court days after the date a response is due.

(2) If the Judge assigned to the earliest-filed case decides that the cases are not related, no change in case assignment will be made. In cases where there are more than two potentially related cases, the Clerk shall submit the order to the Judges assigned to the other cases in order of filing with a form of order to decide within 10 court days if the cases are or are not related. If no Judge relates any of the remaining cases, no change in case assignment will be made.

(3) If any Judge decides that any of the cases are related, pursuant to the Assignment Plan, the Clerk shall reassign all related later-filed cases to that Judge and shall notify the parties and the affected Judges accordingly.

(g) Effect of Order on Case Schedule. The case management conference in any reassigned case will be rescheduled by the newly assigned Judge. The parties shall adjust the dates for the conference, disclosures and report required by FRCivP 16 and 26 accordingly. Unless the assigned Judge otherwise orders, upon reassignment, any dates for hearing noticed motions are automatically vacated and must be renoticed by the moving party before the newly assigned Judge. For cases ordered related after the initial case management conference, unless the assigned Judge otherwise orders, any deadlines established in the case management order shall continue to govern, except for the trial date, which will be rescheduled by the assigned Judge.

Proposed Amended Rule, Red-line version:

3-15. Disqualification of Assigned Judge.

Whenever an affidavit of bias or prejudice directed at a Judge of this Court is filed pursuant to 28 U.S.C. § 144, and the Judge has determined not to recuse him or herself and found that the affidavit is neither ~~frivolous~~ legally insufficient nor interposed for delay, the Judge shall refer the request for disqualification to the Clerk for random assignment to another Judge.

Commentary

Recusal under 28 U.S.C. § 455 is normally undertaken by a Judge sua sponte. However, counsel may bring the issue to a Judge's attention by formal motion or raise it informally at a Case Management Conference or by a letter to the Judge, with a copy to the other parties in the case. This rule does not preclude a Judge from referring matters arising under 28 U.S.C. § 455 to the Clerk so that another Judge can determine disqualification. See also Civil L.R. 3-16.

Proposed New Rule:

3-17. Privacy

A. Personal Identifiers.

1. Documents Filed in the Public File. In compliance with the policy of the Judicial Conference of the United States and the E-Government Act of 2002, and in order to promote electronic access to case files while also protecting personal privacy and other legitimate interests, parties must refrain from including, or must redact where inclusion is necessary, the following personal data identifiers from all pleadings and other papers filed in the public file in civil actions, including exhibits thereto, whether filed electronically or in paper, unless otherwise ordered by the Court.

a. Social Security Numbers. If an individual's social security number must be included in a pleading or other paper filed in the public file, only the last four digits of that number should be used.

b. Names of Minor Children. If the involvement of a minor child must be mentioned in a pleading or other paper filed in the public file, only the initials of that child should be used.

c. Dates of Birth. If an individual's date of birth must be included in a pleading or other paper filed in the public file, only the year should be used.

d. Financial Account Numbers. If financial account numbers are relevant, only the last four digits of these numbers should be included in a pleading or other paper filed in the public file.

2. Documents Filed Under Seal. In compliance with the E-Government Act of 2002, a party wishing to file a document containing the personal data identifiers listed above may file an unredacted document under seal pursuant to Local Rule 79-5. This document will be retained by the Court as part of the record. The party must file a redacted copy for the public file.

B. Responsibility.

The responsibility for redacting these personal identifiers rests solely with counsel and the parties. The Clerk will not review each pleading or other paper for compliance with this rule.

Proposed Amended Rule, Red-line version:

7-1. Motions.

(a) Types of Motions. Any written request to the Court for an order must be presented by one of the following means:

(1) Duly noticed motion pursuant to Civil L.R. 7-2;

(2) A motion to enlarge or shorten time pursuant to Civil L.R. 6-1;

(3) When authorized, an ex parte motion ~~or request~~ pursuant to Civil L.R. 7-10; ~~or~~

(4) When applicable, a motion for administrative relief pursuant to Civil L.R. 7-11; or

(5) Stipulation of the affected parties pursuant to Civil L.R. 7-~~11~~ 12.

Proposed Amended Rule, Red-line version:

7-10. Ex Parte Motions ~~or Miscellaneous Administrative Requests~~.

~~(a) Ex Parte Motion.~~ Unless otherwise ordered by the assigned Judge, a party may file an ex parte motion, that is, a motion filed without notice to opposing party, only if a statute, Federal Rule, local rule or Standing Order authorizes the filing of an ex parte motion in the circumstances and the party has complied with the applicable provisions allowing the party to approach the Court on an ex parte basis. The motion must include a citation to the statute, rule or order which permits the use of an ex parte motion to obtain the relief sought.

Cross Reference

See, e.g., Civil L.R. 65-1 "Temporary Restraining Orders."

7-11. ~~Miscellaneous~~ Motion for Administrative ~~Request~~ Relief. The Court recognizes that during the course of case proceedings a party may require a Court order with respect to miscellaneous administrative matters, not otherwise governed by a federal statute, Federal or local rule or standing order of the assigned judge. These ~~requests~~ motions would include matters such as ~~requests~~ motions to exceed otherwise applicable page limitations or ~~requests~~ motions to file documents under seal, for example.

(a) Form and Content of ~~Requests~~ Motions. A ~~request~~ motion for an order concerning a miscellanous administrative matter may not exceed 5 pages (not counting declarations and exhibits), must set forth specifically the action requested and the reasons supporting the ~~request~~ motion, and must be accompanied by a proposed order or by either a stipulation under Civil L.R. 7-11 or by a declaration that explains why a stipulation could not be obtained. The moving party must deliver the ~~request~~ motion and all attachments to all other parties on the same day as the attachment is filed.

Cross Reference

See Civil L. R. 5-5(a)(2) "Manner of Service," regarding time and methods for deliveryof pleadings and papers.

(b) Opposition to or Support for Motion for ~~Miscellaneous~~ Administrative ~~Request~~ Relief. Any opposition to or support for a Motion for ~~Miscellaneous~~ Administrative ~~Request~~ Relief may not exceed 5 pages (not counting declarations and exhibits), must set forth succinctly the reasons ~~opposing the request~~, must be accompanied by a proposed order, and must be filed no later than the third ~~court~~ day after the ~~request~~ motion has been filed. The opposition or support and all attachments to it must be delivered to all other parties the same day ~~the opposition~~ it is filed.

Cross Reference

See Civil L. R. 5-5(a)(2) "Manner of Service," regarding time and methods for delivery of pleadings and papers.

(c) Action by the Court. Unless otherwise ordered, a Motion for ~~Miscellaneous~~ Administrative ~~Request~~ Relief is deemed submitted for immediate determination without hearing on the day after the opposition is due.

[Existing Local Rules 7-11 through 7-13 will be re-numbered as 7-12 through 7-14]

Proposed Amended Rule, Red-line version:

11-3. ***Pro Hac Vice***

(a) Application. An attorney who is not a member of the bar of this Court may apply to appear pro hac vice in a particular action in this district by filing a written application on oath certifying the following:

(1) That he or she is an active member in good standing of the bar of a United States Court or of the highest court of another State or the District of Columbia, specifying such bar;

(2) That he or she agrees to abide by the Standards of Professional Conduct set forth in Civil L.R. 11-4, and to become familiar with the Local Rules and Alternative Dispute Resolution Programs of this Court;

(3) That an attorney, identified by name, who is a member of the bar of this Court in good standing and who maintains an office within the State of California, is designated as co-counsel.

(b) Disqualification from *pro hac vice* appearance. Unless authorized by an Act of Congress, an applicant is not eligible for permission to practice pro hac vice if the applicant: (i) resides in the State of California; or (ii) is regularly employed in the State of California; or (iii) is regularly engaged in substantial business, professional or other activities in the State of California.

~~**(b)**~~**(c)** **Approval**. The Clerk shall present the application to the assigned judge for approval. The assigned judge shall have discretion to accept or reject the application.

~~**(c)**~~**(d)** **Admission Fee**. Each attorney requesting to be admitted to practice under Civil L.R. 11-3 must pay to the Clerk a fee of $60.00. The assessment will be placed in the Court's Non-Appropriated Fund for library, educational, and other appropriate uses. If the Judge rejects the application, the attorney, upon request, shall have the fee refunded.

~~**(d)**~~**(e)** **Appearances and Service on Local Co-Counsel**. All papers filed by the attorney must indicate appearance pro hac vice. Service of papers on and communications with local co-counsel designated pursuant to Civil L.R. 11-3(a)(3) shall constitute notice to the party.

Proposed Amended Rule, Red-line Version:

16-4. Procedure in Bankruptcy Appeals.

In bankruptcy appeals, the appellant must serve and file a brief no later than 30 days after filing of the record on appeal by the Clerk. The appellee must serve and file a brief not exceeding 25 pages in length no later than 20 days after service of appellant's brief. The appellant may serve and file a reply brief not exceeding 25 pages in length no later than 10 days after service of appellee's brief. Unless the Court orders otherwise, upon the completion of this briefing schedule, the matter will be deemed submitted for decision by the assigned District Judge without oral argument.

In cases where the Federal Rules of Civil Procedure, the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court are silent as to a particular matter of practice on an appeal to the district court from the bankruptcy court, the district judge may apply the Rules of the United States Court of Appeals for the Ninth Circuit, the Federal Rules of Appellate Procedure, and the Rules of the United States Bankruptcy Appellate Panel of the Ninth Circuit.

Proposed Amended Rule, Red-line Version:

26-2. Discovery Cut-Off; Deadline to File Motions to Compel

Unless otherwise ordered, as used in any order of this Court or in these Local Rules, a "discovery cut-off" is the date by which all responses to written discovery are due and by which all depositions must be concluded~~; this includes all discovery from expert witnesses~~.

Where the Court has set a single discovery cut-off for both fact and expert discovery, no motions to compel discovery may be filed more than 7 court days after the discovery cut-off.

Where the Court has set separate deadlines for fact and expert discovery, no motions to compel fact discovery may be filed more than 7 court days after the fact discovery cut-off, and no motions to compel expert discovery may be filed more than 7 court days after the expert discovery cut-off.

Discovery requests that call for responses or depositions ~~from percipients or experts~~ after the applicable discovery cut-off are not enforceable, except by order of the Court for good cause shown. ~~No motions to compel discovery may be filed more than 10 days after discovery cut-off.~~

Proposed Amended Rule, Red-line Version:

30-1. Required Consultation Regarding Scheduling.

Before noticing a deposition, the noticing party must meet and confer ~~consult~~ about the scheduling of the deposition with opposing counsel and, if the deponent is not a party or affiliated with a party, counsel for the non-party deponent or, if the deponent is not represented by counsel, with the non-party deponent, so that the convenience of witnesses, counsel, and parties may be accommodated, if possible.

Proposed Amended Rule, Red-line Version:

54-1. Filing ~~Cost Bill for Taxable Costs~~ of Bill of Costs.

(a) Time for Filing and Content. No later than 14 days after entry of judgment or order under which costs may be claimed, a prevailing party claiming taxable costs must serve and file a bill of ~~taxable~~ costs. The ~~cost~~ bill must state separately and specifically each item of taxable costs claimed. It must be supported by a certificate of counsel, pursuant to 28 U.S.C. §1924, that the costs are correctly stated, were necessarily incurred, and are allowable by law. Appropriate documentation to support each item claimed must be attached to the bill of costs.

Cross Reference

See Civil L. R. 5-5 *"Manner of Service,"* regarding time and methods for service of pleadings and papers.

(b) Effect of Service. Service of bill of ~~taxable~~ costs shall constitute notice pursuant to FRCivP 54(d), of a request for taxation of costs, by the Clerk.

~~**(c) Certificate of Counsel.** The certificate of counsel required by 28 U.S.C. § 1924 as well as the bill of costs submitted pursuant to Civil L.R. 54-1(a) shall be prima facie evidence of the facts recited therein. The burden is on the opposing party to establish that a claim is incorrectly stated, unnecessary or unreasonable.~~

(c) Waiver of costs. Any party who fails to file a bill of costs within the time period provided by this rule will be deemed to have waived costs.

Commentary

~~Costs are taxed in conformity with 28 U.S.C. §§ 1920, 1923 and other applicable statutes. Prior to filing for costs or fees, counsel should consult the courtroom deputy regarding any applicable Court directives or practices regarding the award of costs.~~ The 14-day time period set by this rule is inapplicable where the statute authorizing costs establishes a different time deadline, (e.g., 28 U.S.C. § 2412(d)(1)(B) setting 30 days from final judgment as time limit to file for fees under Equal Access to Justice Act).

54-2. Objections to Bill ~~for Taxable~~ of Costs.

(a) Time for Filing Objections. Within 10 days after service by any party of its bill ~~for taxable~~ of costs, the party against whom costs are claimed must serve and file any specific objections to any item of cost claimed in the bill, succinctly setting forth the grounds of each objection.

(b) Meet and Confer Requirement. Any objections filed under this Local Rule must contain a representation that counsel met and conferred in an effort to resolve disagreement about the taxable costs claimed in the bill, or that the objecting party made a good faith effort to arrange such a conference.

54-3. Standards for Taxing Costs. [No changes]

54-4. Determination of Taxable Costs.

(a) Supplemental Documentation. The Clerk may require and consider further affidavits and documentation as necessary to determine allowable costs.

(b) Taxation of Costs. No sooner than 10 days after ~~receipt of proof of service of~~ a bill of ~~taxable~~ costs ~~on a party against whom costs are claimed~~ has been filed, the Clerk shall tax costs after considering any objections filed pursuant to Civil L.R. 54-2. Costs shall be taxed in conformity with 28 U.S.C. §§ 1920 and 1923, Civil L.R. 54-3, and all other applicable statutes. On the bill of costs or in a separate ~~order~~ notice, the Clerk shall indicate which, if any, of the claimed costs are allowed and against whom such costs are allowed. The Clerk shall serve copies of the notice taxing costs on all parties on the day in which costs are taxed. ~~Unless a timely motion for review of the allowed costs is filed with the assigned Judge, the bill will become final 15 days after the date of the Clerk's notice taxing costs. A motion for review is timely if filed within 5 days of service of the Clerk's notice taxing costs. The motion for review must conform to the requirements of Civil L.R. 7-2.~~

54-5. Motion for Review of Clerk's Taxation of Costs

Pursuant to FRCivP 54(d)(1), any motion for review of the Clerk's taxation of costs must be filed within 5 days of the entry of the notice of taxation of costs. The motion must conform to the requirements of Civil L.R. 7-2 through 7-5. If no motion is filed within 15 days of the Clerk's taxation of costs, the Clerk's determination of costs shall be final.

Proposed New Rule:

73-1. Time for Consent to Magistrate Judge

(a) In cases that are initially assigned to a magistrate judge, unless the magistrate judge has set a different deadline in an individual case:

(1) Parties must either file written consent to the jurisdiction of the magistrate judge, or request reassignment to a district judge, by the deadline for filing the initial case management conference statement.

(2) If a motion that cannot be heard by the magistrate judge without the consent of the parties, pursuant to 28 U.S.C. § 636(c), is filed prior to the initial case management conference, the parties must either file written consent to the jurisdiction of the magistrate judge, or request reassignment to a district judge, no later than five court days after the motion is filed.

(b) In cases that are assigned to a district judge, the parties may consent at any time to reassign the case to a magistrate judge for all purposes, including entry of final judgment, pursuant to 28 U.S.C. § 636(c).

Proposed Amended Rule:

79-5. Filing Documents Under Seal

(a) Specific Court Order Required. No document may be filed under seal, i.e., closed to inspection by the public, except pursuant to a Court order that authorizes the sealing of the particular document, or portions thereof. A sealing order may issue only upon a request that establishes that the document, or portions thereof, is privileged or protectable as a trade secret or otherwise entitled to protection under the law, [hereinafter referred to as "sealable."] The request must be narrowly tailored to seek sealing only of sealable material, and must conform with Civil L.R. 79-5(b) or (c). A stipulation, or a blanket protective order that allows a party to designate documents as sealable, will not suffice to allow the filing of documents under seal. Ordinarily, more than one copy of a particular document should not be submitted for filing under seal in a case.

Cross Reference

See ADR L.R. 4-12(c) *"Award and Judgment; Sealing Award."*

Commentary

As a public forum, this Court's policy is to provide to the public full access to papers filed in the Office of the Clerk. The Court recognizes that, in some cases, the Court must consider confidential information. This rule governs requests to file under seal documents or things, whether pleadings, memoranda, declarations, documentary evidence or other evidence. Proposed protective orders, in which parties establish a procedure for designating and exchanging confidential information, must incorporate the procedures set forth in this rule if, in the course of proceedings in the case, a party proposes to submit sealable information to the Judge. This rule is designed to ensure that the assigned Judge receives in chambers a confidential copy of the unredacted and complete document, annotated to identify which portions are sealable, that a separate unredacted and sealed copy is maintained for appellate review, and that a public copy is filed and available for public review that has the minimum redactions necessary to protect sealable information.

(b) Request to File Entire Document Under Seal. Counsel seeking to file an entire document under seal must:

(1) File and serve an Administrative Motion to File Under Seal, in conformance with Civil L.R. 7-11, accompanied by a declaration establishing that the entire document is sealable;

(2) Lodge with the Clerk and serve a proposed order sealing the document;

(3) Lodge with the Clerk and serve the entire document, contained in an 8 ½- inch by 11-inch sealed envelope or other suitable sealed container, with a cover sheet affixed to the envelope or container, setting out the information required by Civil L.R. 3-4(a) and (b) and prominently displaying the notation:

"DOCUMENT SUBMITTED UNDER SEAL";

(4) Lodge with the Clerk for delivery to the Judge's chambers a second copy of the entire document, in an identical labeled envelope or container.

(c) Request to File a Portion of a Document Under Seal. If only a portion of a document is sealable, counsel seeking to file that portion of the document under seal must:

(1) File and serve an Administrative Motion to File Under Seal, in conformance with Civil L.R. 7-11, accompanied by a declaration establishing that a portion of the document is sealable;

(2) Lodge with the Clerk and serve a proposed order that is narrowly tailored to seal only the portion of the document which is claimed to be sealable;

(3) Lodge with the Clerk and serve the entire document, contained in an 8 ½- inch by 11-inch sealed envelope or other suitable sealed container, with a cover sheet affixed to the envelope or container, setting out the information required by Civil L.R. 3-4(a) and (b) and prominently displaying the notation: "DOCUMENT SUBMITTED UNDER SEAL." The sealable portions of the document must be identified by notations or highlighting within the text;

(4) Lodge with the Clerk for delivery to the Judge's chambers a second copy of the entire document, in an identical labeled envelope or container, with the sealable portions identified;

(5) Lodge with the Clerk and serve a redacted version of the document that can be filed in the public record if the Court grants the sealing order.

Commentary

The Clerk shall stamp the sealed envelope or container containing the lodged document, and any redacted version, as received on the date submitted. Upon receipt of an order to file the lodged document under seal, the Clerk shall file-stamp the sealed envelope or container containing the document, the document, and any redacted version of the document as of the date it was originally lodged with the Court, rather than as of the date that the Court approved its filing under seal. Away from public view, the Clerk shall remove the item from the envelope, place a dated file-stamp on the original document, enter it on the docket, and place the document in a sealed folder which shall be maintained in a secure location at the courthouse of the assigned Judge or at the national Archives and Records Administration or other Court-designated depository. The Clerk will file any redacted version of the document in the public record.

(d) Filing a Document Designated Confidential by Another Party. If a party wishes to file a document that has been designated confidential by another party pursuant to a protective order, or if a party wishes to refer in a memorandum or other filing to information so designated by another party, the submitting party must file and serve an Administrative Motion for a sealing

order and lodge the document, memorandum or other filing in accordance with this rule. If only a portion of the document, memorandum or other filing is sealable, the submitting party must also lodge with the Court a redacted version of the document, memorandum or other filing to be placed in the public record if the Court approves the requested sealing order. Within five days thereafter, the designating party must file with the Court and serve a declaration establishing that the designated information is sealable, and must lodge and serve a narrowly tailored proposed sealing order, or must withdraw the designation of confidentiality. If the designating party does not file its responsive declaration as required by this subsection, the document or proposed filing will be made part of the public record.

(e) Request Denied. If a request to file under seal is denied in part or in full, neither the lodged document nor any proposed redacted version will be filed. The Clerk will notify the submitting party, hold the lodged document for three days for the submitting party to retrieve it, and thereafter, if it is not retrieved, dispose of it. If the request is denied in full, the submitting party may retain the document and not make it part of the record in the case, or, within 3 days, re-submit the document for filing in the public record. If the request is denied in part and granted in part, the party may resubmit the document in a manner that conforms to the Court's order and this rule.

(f) Effect of Seal. Unless otherwise ordered by the Court, any document filed under seal shall be kept from public inspection, including inspection by attorneys and parties to the action, during the pendency of the case. Any document filed under seal in a case shall be open to public inspection without further action by the Court 10 years from the date the case is closed. However, a party that submitted documents that the Court placed under seal in a case may, upon showing good cause at the conclusion of the case, seek an order that would continue the seal until a specific date beyond the 10 years provided by this rule. Nothing in this rule is intended to affect the normal records destruction policy of the United States Courts. The chambers copy of sealed documents will be disposed of in accordance with the assigned Judge's discretion. Ordinarily these copies will be recycled, not shredded, unless special arrangements are made.

ADMIRALTY LOCAL RULES

Proposed Amended Rule, Red-line version:

1-2. Scope.

These admiralty local rules apply only to proceedings that are governed by the Supplemental Rules for Certain Admiralty and Maritime Claims of the Federal Rules of Civil Procedure ("FRCivP Supp"): maritime attachment and garnishment; actions *in rem*; possessory, petitory and partition actions; actions for exoneration from or limitation of liability; and statutory condemnation and forfeiture proceedings analogous to maritime actions *in rem*. The Federal Rules of Civil Procedure and the civil local rules of this court are also applicable in these proceedings, except to the extent that the civil local rules are inconsistent with these admiralty local rules.

Cross Reference

See FRCivP Supp A.

Proposed Amended Rule, Red-line version:

2-1. Verification of Pleadings.

Verification of every pleading, statement of right or interest, or other paper as required by FRCivP Supp B, C, and D shall be upon oath or solemn affirmation, or in the form provided by 28 U.S.C. § 1746, by a party or by an authorized officer of a corporate party. If no party or authorized corporate officer is present within the district, verification of a complaint may be made by an agent, attorney in fact, or attorney of record, who shall state the sources of the knowledge, information and belief contained in the complaint; declare that the document verified is true to the best of that knowledge, information, and belief; state why verification is not made by the party or an authorized corporate officer; and state that the affiant is authorized to so verify. A verification not made by a party or authorized corporate officer will be deemed to have been made by the party as if verified personally. If the verification was not made by a party or authorized corporate officer, any interested party may move, with or without requesting a stay, for the personal oath of a party or an authorized corporate officer, which shall be procured by commission or as otherwise ordered.

Cross Reference

See 28 U.S.C. § 1746.

Proposed Amended Rule, Red-line version:

4-2. Notice of Action and Arrest.

(a) Publication. The notice required by FRCivP Supp C(4) shall be published once in a newspaper named in Civil L.R. 77-4, and plaintiff's attorney shall file a copy of the notice as it was published with the clerk. The notice shall contain:

(1) The court, title, and number of the action;

(2) The date of the arrest;

(3) The identity of the property arrested;

(4) The name, address, and telephone number of the attorney for plaintiff;

(5) ~~A statement that the claim of a person who is entitled to possession or who claims as interest pursuant to FRCivP Supp C(6) must be filed with the clerk and served on the attorney for plaintiff within 10 days after publication;~~ **(i)** In an in rem forfeiture action for violation of a federal statute, a statement that any person who asserts an interest in or right against the property pursuant to FRCivP. Supp C(6)(a) must file a verified statement identifying such interest within 30 days after the earlier of (1) the date of service of the Government's complaint or (2) completed publication of notice under Rule C(4);

(ii) In an in rem action not governed by subsection (i), a statement that any person who asserts a right of possession or any ownership interest in the property pursuant to FRCivP. Supp C(6)(b) must file a verified statement of right or interest within the period specified by court order or, if the court has not fixed a case-specific deadline, within the period prescribed by Rule C(6)(b)(i)(A) of the Supplemental Rules for Certain Admiralty and Maritime Claims. See Commentary, below, for clarification.

(6) A statement that any person required to file a verified statement of right or interest must also file and serve an answer to the complaint ~~must be filed and served~~ within twenty days after ~~publication~~ filing the statement of interest or right, and that otherwise, default may be entered and condemnation ordered;

(7) In an in rem action governed by FRCivP. Supp C(6)(b), a statement that applications for intervention under FRCivP 24 by persons claiming maritime liens or other interests against the property shall be filed within the time fixed by the court; and

(8) The name, address, and telephone number of the marshal.

(b) Filing of Proof of Publication. No later than thirty days after the date of publication, plaintiff shall cause to be filed with the clerk sworn proof of publication by or on behalf of the publisher of the newspaper in which notice was published, together with a copy of the publication or reproduction thereof.

Cross Reference

See FRCivP Supp C(3) and Advisory Committee Notes to the 2000 Amendment regarding subsections C(6)(a) and (b), which differentiate between in rem forfeitures for violation of a federal statute and traditional admiralty and maritime actions.

Commentary

It appears that an error was made when FRCivP. Supp. Rule 6(b)(i)(A) (for Certain Admiralty and Maritime Claims) was amended in 2000. As currently framed, that Rule requires the filing of a verified statement of right or interest (unless otherwise ordered by the court) "within 10 days after the earlier of (1) the execution of process, or (2) completed publication of notice under Rule C(4)." The error is rooted in the fact that execution of process (in this setting) always will precede completion of publication of notice. Thus, parties should understand that the deadline (absent a court order specifying otherwise) in fact always will be within ten days after execution of process. Action (by consensus and through the national rule making process) to correct the error in the federal rule is well under way, but will not be completed for some time.

Proposed Amended Rule, Red-line version:

6-2. Entry of Default and Default Judgment.

After the time for filing an answer has expired, the plaintiff may apply for entry of default under FRCivP 55(a). Judgment may be entered under FRCivP 55(b) at any time after default has been entered. Default will be entered upon a showing that:

(a) Notice has been given as required by Admir. L.R. 6-1;

(b) The time to answer has expired, and

(c) No one has ~~appeared to claim~~ filed a verified statement of right or interest in the property.

Proposed Amended Rule, Red-line version:

8-1. Intervenor's Lien or Other Non-Possessory or Non-Ownership Claim in Admiralty and Maritime Cases.

(a) ~~Presentation of Claim~~ Filing of Intervening Complaint. When a vessel or other property has been arrested, attached or garnished in an action filed pursuant to FRCivP. Supp B, C(6)(b), or D, and the vessel or property is in the hands of the marshal or custodian substituted therefor, anyone having a lien or other non-possessory or non-ownership based claim against the vessel or property is required to present said claim by filing an intervening complaint, and not by filing an original complaint, unless otherwise ordered by a judge. The clerk shall promptly deliver a conformed copy of the complaint in intervention and the intervenor's warrant of arrest or process of attachment or garnishment to the marshal, who shall deliver the same to the vessel or custodian of the property. Intervenors shall thereafter be subject to the rights and obligations of parties, and the vessel or property shall stand arrested, attached or garnished by the intervenor. An intervenor shall not be required to advance a security deposit to the marshal.

(b) Sharing Marshal's Fees and Expenses. An intervenor shall owe a debt to the first plaintiff, enforceable on motion, consisting of the intervenor's share of the marshal's fees and expenses in the proportion that the intervenor's claim bears to the sum of all the claims. If a party plaintiff permits vacation of an arrest, attachment or garnishment, remaining plaintiffs share the responsibility to the marshal for fees and expenses in proportion to the remaining claims and for the duration of the marshal's custody because of each claim.

HABEAS CORPUS LOCAL RULES

Proposed Amended Rule, Red-line Version:

2254-6. Briefing Schedule.

(a) Schedule. Unless the Judge summarily dismisses the petition under Rule 4 of the Rules Governing § 2254 Cases, the schedule and procedure set forth in this Rule shall apply, subject to modification by the assigned Judge. Requests for enlargement of any time period in this rule shall comply with the applicable Civil Local Rules for enlargement of time.

Cross Reference
See Civil L.R. 7-8 "Enlargement or Shortening of Time."

(b) Answer to Petition. After the Court orders a response to the petition, within 60 days of service of a noncapital petition, the respondent shall serve and file:

(1) An answer to the petition with accompanying points and authorities;

(2) The matters defined in Rule 5 of the Rules Governing § 2254 Cases;

(3) Portions of the trial and appellate record that are relevant to a determination of the issues presented by the petition which have not been previously filed; and

(4) Certificate of service, pursuant to Civil L.R. 5-4.

(c) Traverse. Within 30 days after the respondent has filed the answer, the petitioner may serve and file a traverse.

CRIMINAL LOCAL RULES

Proposed Amended Rule, Red-line Version:

5-1. Criminal Case Proceedings before Assignment to a District Judge

(c) Initial Appearance After Arrest. Whenever a person is arrested in this District for a federal offense, the person shall be brought without unnecessary delay before ~~the nearest available~~ a Magistrate Judge. The Magistrate Judge before whom the person is brought shall preside over the initial appearance in accordance with FRCrimP 5. All subsequent proceedings shall be conducted at the courthouse where the case has been assigned pursuant to Crim. L.R. 7-1.

Proposed New Rule:

12.4-1. Disclosure of Nongovernmental Corporate Party.

(a) Certification. The disclosure statement required pursuant to FRCrimP 12.4(a)(1) must be entitled "Certification of Nongovernmental Corporate Party." If a party has no disclosure to make pursuant to this rule, that party must make a certification stating that no such interest is known.

(b) Form of Certification. The certification required by subpart (a) of this rule must take the following form, as is appropriate to the proceeding:

(1) If there is any interest to be certified: "Pursuant to FRCrimP 12.4(a)(1) and Crim. L.R. 12.4-1(a), the undersigned certifies that the following parent or publicly held corporation owns 10 per cent or more of the stock of (name of party), a non-governmental corporate party to this action: (List name of parent or publicly held corporation). Signature, Attorney of Record."

(2) If there is no interest to be certified: "Pursuant to FRCrimP 12.4(a)(1) and Crim. L.R. 12.4-1(a), the undersigned certifies that as of this date, other than the named parties, there is no parent or publicly held corporation which owns 10 per cent or more of the stock of (name of party), a non-governmental corporate party to this action. Signature, Attorney of Record."

(3) Certification, pursuant to subpart (a) of this rule, must be filed as a separate and distinct document.

(4) Any supplemental filing required pursuant to FRCrimP 12.4(b) must be entitled "Supplemental Certification of Nongovernmental Corporate Party" and must comply with the form requirements of subpart (b)(1) of this rule.

(5) When an action is assigned to a district judge pursuant to Crim. L.R. 7-1(a) or is reassigned to another judge pursuant to Crim. L.R. 8-1 or General Order No. 44 - Assignment Plan, each party must lodge with the Clerk a chambers copy for the newly assigned judge of any previously filed certification required by this rule.

12.4-2. Disclosure of Organizational Victim.

(a) Certification. The government's disclosure statement required pursuant to FRCrimP 12.4(a)(2) must be entitled "Certification of Organizational Victim."

(b) Form of Certification. The certification required by subpart (a) of this rule must

take the following form:

(1) "Pursuant to FRCrimP 12.4(a)(2) and Crim. L.R. 12.4-2(a), the undersigned certifies that the following organization is a victim of the alleged criminal activity charged herein: (name of victim). The parent or publicly held corporation owning 10 per cent or more of the stock of (name of victim) is: (List name of parent or publicly held corporation, if obtainable. If unobtainable, state "Not obtainable."). Signature, Attorney of Record."

(2) Certification, pursuant to subpart (a) of this rule, must be filed as a separate document.

(3) Any supplemental filing required pursuant to FRCrimP 12.4(b) must be entitled "Supplemental Certification of Organizational Victim" and must comply with the form requirements of subpart (b)(1) of this rule.

(4) When an action is assigned to a district judge pursuant to Crim. L.R. 7-1(a) or is reassigned to another judge pursuant to Crim. L.R. 8-1 or General Order No. 44 - Assignment Plan, each party must lodge with the Clerk a chambers copy for the newly assigned judge of any previously filed certification required by this rule.